Opinion No. 61-75

August 17, 1961

BY: OPINION OF EARL E. HARTLEY, Attorney General Oliver E. Payne, Assistant Attorney General

TO: Mr. Paul W. Masters, Administrative Officer, New Mexico Department of Public Health, 408 Galisteo Street, Santa Fe, New Mexico

QUESTION

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May State Health Department funds be expended for equipment and supplies utilized in a county health program and may State funds also be used to pay salary and travel expenses of persons stationed in a county and working under the direction of the district health officer?

CONCLUSION

Yes.

OPINION

ANALYSIS

As we understand it, the factual background giving rise to this opinion request is that the Department of Finance and Administration is now prohibiting the Department of Public Health from expending appropriated funds for the support of health programs at the county level. Just as an example, you cite the situation of a sanitarian in Colfax County. The County has budgeted only $ 2400.00 toward the salary of a sanitarian because this is all the county can afford. The State Department of Public Health has added $ 1500 to this figure from its appropriated funds in order that a full-time sanitarian might be employed to enforce state health regulations in the area assigned to him.

The State Department of Finance and Administration has refused to approve this and other like expenditures primarily on the basis of Section 12-2-11, N.M.S.A., 1953 Compilation (P.S.). Basically, this statute provides that persons, other than the district health officer, who are employed to execute the health laws and regulations in the county shall be paid from the "county health fund." Section 12-3-35, N.M.S.A., 1953 Compilation, provides for the creation of the county health fund to be derived from an ad valorem tax on the property in the county.

Standing alone, it may be that these provisions are unambiguous and not properly the subject for statutory interpretation. **Tafoya v. Garcia,** 1 N.M. 480. But when considered

in the context of all the statutes relative to the operation and financing of the State's health program, determination of the true legislative intent not only becomes proper but mandatory. Inasmuch as the language of statutes constitutes the reservoir of the legislative intent, in order to ascertain that intent the statutes must be considered as a whole, just as it is necessary to consider an entire paragraph, chapter, or indeed an entire book, in order to grasp its true meaning. Crawford, **Statutory Construction,** § 165 (1940); **Sakariason v. Mechem,** 20 N.M. 307, 149 Pac. 352.

With this view in mind, we turn first to the statutory enactments establishing the Department of Public Health. Section 12-1-3, N.M.S.A., 1953 Compilation, sets forth the powers of the Department. Among these powers is the authority "to receive and disburse such funds, commodities, equipment and supplies and any other kind of property, granted, loaned or advanced to the State of New Mexico for the protection of public health." Section 12-1-3 (8), supra. In this connection, it is to be noted that a considerable portion of the funds spent by the Department to support county health programs are received from the Federal government.

Section 12-1-3 (9) confers upon the Department the powers necessary to accomplish the purposes of the public health act. Section 12-1-4, N.M.S.A., 1953 Compilation, provides that the Department shall be responsible for the administration of the public health activities and shall supervise the health of the people of the state. Under this Section, some nineteen separate obligations covering a wide range of health activities are imposed on the Department. In order to accomplish these legislative mandates, it has been the Department's policy to operate on a county by county basis, supplementing the funds provided by the individual counties with state funds.

Section 12-1-6, N.M.S.A., 1953 Compilation, provides that the State Board of Public Health shall determine what assistants may be necessary to carry out the provisions of the act and the salary to be paid to each. Section 12-1-7, N.M.S.A., 1953 Compilation, provides that after the Board has determined what positions of employment are necessary to carry out the provisions of the act and the salaries to be paid to each, the State Director of Public Health may employ and discharge such assistants. Other duties are imposed upon the State Board by Section 12-1-13, N.M.S.A., 1953 Compilation.

The provisions discussed above, all of which were enacted some eighteen to twenty years after the initial passage of the statutes relied on by the Department of Finance (the statutes relied upon by the Finance Department were passed long before there was such an entity as the Department of Public Health) become relatively meaningless if only county funds may be used to support the health program in individual counties. For example, there are only $ 1294 in county funds available for support of the health program in Mora County during fiscal year 1961-62. Consequently, the State proposes to contribute $ 14,299 to that County during fiscal year 1961-62, to ensure a county health program.

There are compelling principles of statutory interpretation that lead us inevitably to the conclusion that the Department of Public Health may contribute financially to the health

program conducted in the various counties -- by way of salaries, travel expenses, equipment and services.

Since the creation of the Department of Public Health as a separate agency in 1937, the uniform construction placed on the relevant statutes by the administrators of the Department has been that funds appropriated to the Department could be expended along with county funds to provide a health program in each county. Such long established interpretations by the agency involved are not lightly to be overturned. While long interpretation of a statute by the executive authority charged with its administration is not binding on the courts, it is highly persuasive. **State ex rel. Dickson v. Aldridge,** 66 N.M. 390, 348 P. 2d 1002; **Ortega v. Ortega,** 48 N.M. 588, 154 P. 2d 252; **City of Roswell v. Mountain States Telephone & Telegraph Co.,** 78 F.2d 379.

Further, where the legislature has met since the particular department placed its interpretation on a given statute, its failure to indicate that the administrative construction is not actually in accord with legislative intent is a persuasive argument that the legislative body approves of the administrative agency's construction. Crawford, **Statutory Construction,** § 221 (1940).

Such an overturning of settled administrative decision and policy is particularly objectionable where, as here, the legislature was not only fully aware of the established interpretation but explicitly approved it by way of appropriation. The full picture was presented to the 1961 Legislature, as well as to preceding ones. The Department of Public Health's presentation to the last legislature contained a complete county by county breakdown showing the amount of State funds to be contributed to the health program in each county. At the Legislature's specific request, the actual expenditures for the last fiscal year for which complete data was available was presented at the Legislative budget hearing. This information explicitly showed that during fiscal year 1959-60, forty-nine and one-half percent of the legislative appropriation to the Department of Public Health had been expended in support of county health programs. Total contributions to county programs were broken down on an item by item basis showing the amount of county funds and the amount of state funds that made up the county health department budgets. That the Legislature is fully aware of the Department's policy is amply demonstrated by the recorded proceedings at the 1961 Legislative budget hearing for the Department of Public Health.

We are fully cognizant of the fact that the use of extrinsic aids to ascertain legislative intent, such as those just discussed, is not universally recognized. However, it is our view that those charged with interpreting the law should not be shut off from any probative source of information which is useful in accomplishing this task. **West v. Sun Cab Co.,** Md., 154 Atl. 100. To us, there seems little justification for a position which refuses to the statutory interpreter an access to extraneous material, the weight and value of such material being dependent upon the particular circumstances. See **People ex rel. Fleming v. Dalton,** 155 N.Y. 175, 52 N. E. 1113.

Application of another doctrine of statutory interpretation seems particularly appropriate in this case. That is the so-called rule of "spirit and reason of the law." This principle was adopted in New Mexico as early as 1871 in the case of **Tafoya v. Garcia,** 1 N.M. 480, 483, where the Court stated:

"The spirit, as well as the letter of the statute, must be respected; and where the whole context of a law demonstrates a particular intent in the legislature to effect a certain object, some degree of implication may be called in to aid that intent."

Amplifying on this "rule of reason," our Supreme Court has frequently held that statutes will be construed in the most beneficial way which their language will permit to prevent absurdity, hardship, or injustice, to favor public convenience and to oppose all prejudice to the public interest. **State v. Llewellyn,** 23 N.M. 167 Pac. 414; **State v. Southern Pac. Co.,** 34 N.M. 306, 281 Pac. 29; **Fisherdick v. San Juan County Board of Education,** 30 N.M. 454, 236 Pac. 743.

Our Department of Public Health and its county health programs have been pain stakingly built up over the years, to a considerable extent with State and Federal Funds. Legislative action has, of course, played a large part in this building program. Thus it would seem rather absurd to attribute an intention to the same body to destroy the very Department which it created and helped become effective.

And most assuredly the interpretation contended for by the Department of Finance would result in the destruction of the State's health program at the county level with concomitant health hazards following in the wake. The plain fact is, as the Legislature well understands, many of the counties simply cannot finance an effective system of public health. County funds for health purposes are derived from a one mill on the dollar levy of assessed valuation of taxable property in the county. Section 12-3-35, supra. We do not mean to imply that the counties are to be relieved of the obligation of furnishing their share of the total county health budget. Nor does the Department of Public Health operate in this fashion. Prior to drawing up the county health budget, the Director of the Division of Business Management of the Department meets with the District Health Officer to determine the needs of each county in the district. Thereafter, pre-budget meetings are held with the Board of County Commissioners in each county. Subsequently a full-fledged county budget hearing is held with the Department's representative present.

In every county, funds from the state are not only useful, but necessary for the minimum protection of the public health. In many counties the amount of taxable property is relatively low. Here, State funds to help finance the health program are imperative. And generally speaking, these counties are the very ones where proper health facilities are most needed. A few examples for fiscal year 1961-62 should be sufficient to demonstrate this point. In De Baca County, local funds for health purposes amount to $ 2,362, the State's proposed contribution is $ 9,266. In Taos County the State proposes to furnish $ 17,402, the County $ 3,323. In Sandoval County, County funds amount to $ 3,982, the State's proposed share to be $ 13,559. In Guadalupe County, the State's

share would amount to $ 12,972, the County money available is $ 2,374. Sierra County will furnish $ 1,717, the State $ 11,566. Mora County: State funds $ 14,299, County funds $ 1,294. Harding County: State funds $ 11,713, County funds $ 1,223. The same picture appears throughout the more financially hardpressed counties, and even in a county like Bernalillo the State's participation is to be $ 60,237, the County funds amounting to $ 127,800.

We simply point these facts out to indicate the aptness in the present situation of applying the established rule of statutory interpretation that a manifestly unjust intention should not be attributed to the Legislature where another interpretation is possible.

That an effective Public Health Department is a necessary part of our social structure and is essential for the advancement of the public welfare has long been recognized by the New Mexico Legislature. A purpose to disregard this long established State public policy should not be attributed to the Legislature except upon the most compelling evidence of such intention. We find no such intention. Quite to the contrary, it is our opinion that later enactments, together with the Legislature's awareness and tacit approval of the Department's interpretation, have modified Section 12-2-11, supra. Consequently, the Department of Public Health may supplement county funds with state funds in order to provide health services and facilities on a county level.